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DEPARTMENT OF JUSTICE

[Docket No. CIV 154]

September 11th Victim Compensation Fund: Compensation of Claims

AGENCY: Department of Justice (DOJ).

ACTION: Notice of Inquiry; request for comment.

SUMMARY: Under the James Zadroga 9/11 Victim Compensation Fund Reauthorization Act, Public Law No. 114-113 (December 18, 2015) (“Reauthorization Act”), the Special Master for the September 11th Victim Compensation Fund (“VCF”) is required to periodically reassess VCF policies and procedures to ensure that (1) the VCF prioritizes compensation to those claimants who suffer with the most debilitating conditions, and (2) the VCF does not exceed the amount of available appropriated funds. Current projections, using data as of August 31, 2018, and at the current rate of disbursement, suggest a possibility that the funds that have been appropriated to compensate claimants pursuant to the James Zadroga 9/11 Health and Compensation Act of 2010 (“Zadroga Act”), Public Law No. 111-347 (January 2, 2011), as amended by the Reauthorization Act, may be insufficient to compensate all claims (including those filed and those anticipated to be filed) under the current policies and procedures guiding the calculation of awards. In an abundance of caution, therefore, and in fulfillment of her statutory responsibility to conduct periodic reassessments of VCF policies and procedures under the Act, the Special Master issues this Notice of Inquiry to seek public comments on how the remaining funds might be allocated in a fair and equitable manner to claims and amendments that have not yet been determined, with priority given, as the Reauthorization Act requires, to those claimants with the most debilitating

conditions. This is a request for information only. No determination has been made that any changes to VCF policies and procedures are necessary at this time. Instead, the Special Master will reassess the available funds and VCF policies and procedures as required by law in early 2019 with data as of December 31, 2018. In the event that the Special Master determines, at that time, that VCF policies and procedures need to be changed, then suggestions made in response to this Notice of Inquiry will be considered. Any changes to policy made as a result of the required statutory reassessment completed with data as of December 31, 2018, will be effective only as to claims filed after February 1, 2019, or such other date as the Special Master shall announce.

DATES: Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The electronic Federal Docket Management System (FDMS) will accept comments until midnight Eastern Time at the end of that day.

ADDRESSES: To access and review all the documents related to the information listed in this notice, please use <http://www.regulations.gov> by searching the Docket ID number CIV-154.

To avoid confusion with incoming mail vital to the processing of VCF claims, commenters are strongly encouraged to submit comments electronically. Comments submitted in response to this notice should be submitted by either of the following methods:

- Internet: Via the Federal eRulemaking Portal at <http://www.regulations.gov>. Follow instructions for sending comments by selecting the Docket ID number.
- By mail: Addressed to September 11th Victim Compensation Fund, Civil Division, U.S. Department of Justice, 290 Broadway, Suite 1300, New York, New York 10007. To ensure proper handling, please reference Docket CIV-154 on your correspondence.

Please note that comments submitted by fax, email, or mail sent to any address other than the one above, and those submitted after the comment period ends, will not be accepted.

FOR FURTHER INFORMATION CONTACT: For specific questions about this Notice, please contact Sally Flynn, Chief of Staff to the Special Master, September 11th Victim Compensation Fund, 855-885-1555 (TTY 855-885-1558).

SUPPLEMENTARY INFORMATION:

Background

The VCF was originally created by Public Law No. 107-42 (September 22, 2001), as amended by Public Law No. 107-71 (November 19, 2001), to provide compensation for any individual (or a personal representative of a deceased individual) who suffered physical harm or was killed as a result of the terrorist-related aircraft crashes of September 11, 2001, or the debris removal efforts that took place in the immediate aftermath of those crashes. The original VCF (“VCF I”) operated from 2001-2004 under the direction of Special Master Kenneth Feinberg, and distributed over \$7 billion. VCF I concluded operations in June 2004.

On January 2, 2011, the President signed into law the Zadroga Act. Title II of the Zadroga Act reactivated the VCF, expanded its pool of eligible claimants, and appropriated \$2.775 billion for the operation of the VCF. Pursuant to the Zadroga Act, the VCF re-opened in October 2011 and was authorized to accept claims for a period of five years, ending in October 2016, with a final year for processing and paying claims until October 2017. On December 18, 2015, the President signed into law the Reauthorization Act. The Reauthorization Act extended the VCF for an additional five years, allowing individuals to submit claims until December 18, 2020, and appropriated an additional \$4.6 billion. The VCF is administered by a Special Master appointed by the Attorney General.

The Zadroga Act, as amended, authorizes the Special Master to determine claims based on the harm to the claimant, the facts of the claim, and the individual circumstances of the claimant. The Special Master has promulgated regulations governing the determination of claims, which are published at 28 C.F.R. Part 104. The VCF also maintains a website, www.vcf.gov, which provides information to the public concerning the operation of the Fund and instructions to potential claimants regarding application procedures, including a substantial Policies and Procedures document that includes information on eligibility criteria, the methodology used to calculate economic and non-economic loss, payment procedures, appeals and hearings, claims for deceased individuals, and information for claimants who are represented by an attorney. The VCF's Sixth Annual Status Report and Second Annual Reassessment of Policies and Procedures was published on February 13, 2018, and monthly progress statistics are published on the website.

The original amount appropriated to fund claims filed pursuant to the Zadroga Act and to pay the cost of operating the VCF was \$2.775 billion. The Reauthorization Act appropriated an additional amount of \$4.6 billion, for a total amount of \$7.375 billion available to pay VCF claims and to cover operational and administrative costs. As of August 31, 2018, \$4.279 billion has been awarded in compensation on VCF claims. As of September 30, 2017 (the end of the most recent Government Fiscal Year), the costs to administer the program totaled \$101.3 million, or approximately three percent of the total awards issued as of December 31, 2017.

The Reauthorization Act directs the Special Master to periodically reassess policies and procedures to make sure that the VCF (1) "prioritize[s] claims for claimants who are determined by the Special Master as suffering from the most debilitating physical conditions to ensure, for purposes of equity, that such claimants are not unduly burdened by such policies or procedures";

and (2) does not exceed “the amount of funds deposited into the Victims Compensation Fund.”

Current projections, based on forecasts from the World Trade Center Health Program and VCF historical data as of August 31, 2018, suggest the possibility that the VCF may exceed its available funding prior to the currently designated program end. The methodology used to derive these projections is described in the VCF’s Sixth Annual Report, at pp 26-37. With data as of December 31, 2017, the Sixth Annual Report made the following projections:

Projections from the VCF’s Sixth Annual Report with data as of December 31, 2017	
Total Claims Filed	32,689
New Claims Expected to be Filed	6,614
Total Revised Claims Filed	6,288
New Revisions Expected to be Filed	4,717
Value of All Awards by Program End	\$7,031,513,264.45
Value of Administrative Costs by Program End	\$263,800,000.00
Total Program Cost at Program End	\$7,295,313,264.45

Applying the same methodology to VCF data as of August 31, 2018, and at the current rate of disbursement, the projections suggest the possibility that the \$7.375 billion in total funding that has been appropriated to compensate claimants may be insufficient to compensate all claims (including those already filed and those anticipated to be filed) under the current policies and procedures guiding the calculation of awards.

There is considerable uncertainty in these projections, as discussed in the Sixth Annual Report, see pp. 26-37 (see also the VCF’s Fifth Annual Status and Report and First Annual

Reassessment of Policies and Procedures, published March 13, 2017, at pp. 21-34), and several considerations warrant caution, but the VCF believes that, in total, the projections may undervalue program costs and therefore currently underestimate total VCF cost at program end. First, the most recent projections extrapolate from August 31, 2018, data to estimate that approximately 5,500 new claims will be filed before the VCF stops taking claims on December 18, 2020, which is almost certainly an undercount of potential new claims. Over 5,800 claims were filed between December 31, 2017, and August 31, 2018, and the VCF has not seen any noticeable decrease in the number of new claims being filed per month. Second, the projections based on August 31, 2018, data reflect a slight increase in the average value of claim awards, and a more than one percent increase in the number of deceased claim filings. While the former may be an anomaly or a trend that will even out over time, the historical data suggests that the latter is not; the number of deceased claims as a percentage of all claims is increasing (although it still constitutes less than five percent of all claims filed), and is expected to continue to increase as we get further from the events of September 11, 2001. Deceased claims tend to be higher value awards and thus account for some part of the increasing award values.

Accordingly, while the VCF intends to continue to monitor its data closely, and will provide a new reassessment and projections derived from data as of December 31, 2018, when it publishes its Seventh Annual Report in 2019, the Special Master believes that the current projections provide a basis for seeking public input on whether current VCF policies and procedures are appropriately tailored to meet the two statutory directives of prioritizing compensation for those claimants with the most debilitating conditions and not exceeding the available amount of appropriated funds. So that the Special Master can fulfill her statutory obligation to conduct periodic reassessments with the best available information, the VCF is

soliciting suggestions from the 9/11 community and other interested members of the public as to potential policy changes that might be considered as the VCF evaluates how to continue to meet its prioritization and funding requirements, noted above, mandated by the Reauthorization Act. The Special Master believes that soliciting suggestions from the public is important given that the equitable distribution of funds is a concern for everyone in the 9/11 community, and thus, welcomes public feedback on her statutory obligations.

At this time, the VCF does not contemplate implementing any changes that would require amendment of the regulations governing the program. Should any changes to VCF policies or procedures be determined to be necessary following the Special Master's reassessment of data for the period ending December 31, 2018, any changes will be effective as of February 1, 2019, or such later date as the Special Master shall announce, and will be applicable only to claims where the claim form or amendment is submitted for compensation review after that effective date. Claims where the claim form or amendment is submitted for compensation review prior to the effective date of the changes will be evaluated under the policies and procedures in effect at the time the claim or amendment is reviewed.

REQUEST FOR COMMENTS

The VCF requests public comments on the topics listed below. As used below, the term "victim" refers to the individual who has been diagnosed with a September 11th-related physical injury or condition. The term "claimant" refers to the individual who is filing the claim to seek compensation on behalf of the victim. Individuals who are filing a Personal Injury claim on their own behalf are both the claimant and the victim. In order to contribute effectively to the VCF inquiry process, all commenters are encouraged to provide comments that are responsive

specifically to the topics set forth below. All submissions must include the document title and docket number. Please note the topic on which you are commenting at the top of each response (and, as applicable, the question number), and separately address each topic. You do not need to address all topics. General comments on other aspects of the VCF and its operation are outside of the scope of this inquiry and will not be reviewed at this time.

In general, all comments received will be posted without change to <http://www.regulations.gov>. All submissions in response to this Notice of Inquiry, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Proprietary information or sensitive personal information, such as account numbers or Social Security numbers, or names of claimants or other individuals, should not be included. Submissions will be edited to remove any identifying or contact information.

The VCF will review all comments from the public and will address all substantive comments received when it makes a determination as to whether policy and procedure changes are required in light of projections rendered with data as of December 31, 2018. The VCF's response to the comments received in response to this Notice will be provided with the Seventh Annual Report, currently expected to be published in February 2019.

TOPICS OF INQUIRY

TOPIC 1: Non-Economic Loss

The Zadroga Act, as amended, defines non-economic loss as losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other non-pecuniary losses of

any kind or nature. Non-economic loss is sometimes called a “pain and suffering” award. The VCF calculates non-economic loss based generally on the severity of the condition and the effect of the condition on the victim’s ability to maintain normal activities of daily living. The amount of non-economic loss is not tied to the number of conditions from which the individual suffers. The Reauthorization Act established certain caps on non-economic awards for physical injury claims. The maximum non-economic loss for any one type of cancer condition is \$250,000. The maximum non-economic loss for any one type of non-cancer condition is \$90,000. As a matter of policy, and in accordance with the statutory mandate to prioritize funding for the most debilitating conditions, the VCF has established a low-end non-economic loss award of \$20,000 where there is no medical evidence of severity or where there is medical documentation demonstrating that the conditions have resolved over time, are reasonably well-controlled, or have only a mild impairment on the victim’s daily life. Similarly, as a matter of policy, the Special Master has identified certain conditions that are treated as presumptively severe and debilitating, warranting the highest-available non-economic loss award. Details regarding how the VCF considers and calculates non-economic loss, including the conditions that the Special Master has identified as presumptively severe and debilitating, are included in the VCF’s Policies and Procedures document, at pp. 33-35.

TOPIC 1 Questions:

- A. Which non-cancer conditions should be reevaluated in terms of the presumptive amount of non-economic loss awarded? Are there certain non-cancer conditions that should no longer be considered as presumptively severe and debilitating (and therefore no longer presumed to receive the maximum \$90,000 non-economic loss award), at least without any further documentation of ongoing severity?

- B. Which cancer conditions, if any, should be reevaluated in terms of the amount of non-economic loss awarded? Are there certain cancer conditions that have a limited impact on daily life or are generally considered to be curable that should be presumed to receive lower non-economic loss awards relative to other cancers?
- C. Should the VCF lower the \$20,000 low-end non-economic loss award for non-cancer conditions (before applicable collateral offsets are deducted) for claims with no medical evidence of ongoing severity?
- D. Should the VCF consider the age of the claimant when evaluating non-economic loss?
- E. What additional suggestions do you have for changes to non-economic loss awards that address the goals of preserving funds and ensuring that funding is prioritized for those with the most debilitating eligible conditions?

TOPIC 2: Lost Earnings and Benefits

The Zadroga Act, as amended, defines economic loss as any pecuniary loss resulting from harm, including the loss of earnings or other benefits related to employment, replacement services loss, loss due to death, burial costs, loss of business or employment opportunities, and past out-of-pocket medical expenses loss (but not future medical expenses loss), to the extent recovery for such loss is allowed under applicable State law. There are four types of economic loss: loss of earnings/benefits, replacement services loss, out-of-pocket medical expenses, and burial expenses. Sections 2.2, 2.3, and 2.4 (pp. 36-61) of the VCF's Policies and Procedures describe the VCF's methodology for calculating economic losses.

Claimants who are physically injured as a result of eligible conditions can make claims for earnings and/or employment benefits lost before they submitted their claims to the VCF, as well as for earnings/benefits they expect to lose in the future (after submission of their claims) as

a result of their eligible conditions. Claimants who are filing on behalf of a deceased victim (meaning a victim whose death is attributable to an eligible 9/11-related condition) can make claims for lost earnings/benefits incurred before the victim died as a result of an eligible condition, as well as for the lost future earnings/benefits resulting from the death of the victim. The Reauthorization Act imposes a gross income limitation of \$200,000 per year when the VCF calculates income loss in these scenarios.

The loss of employment-related benefits for which the VCF may compensate generally consist of retirement and healthcare benefits. If such benefits were provided through the victim's employment and were lost as a result of death or disability related to an eligible condition, the VCF may compensate that loss. Loss of healthcare benefits is generally measured by the employer's cost to provide the healthcare benefits. Similarly, the VCF can compensate for the loss of an employer's regular contributions to a 401k or similar retirement plan. Losses associated with a defined benefit pension plan involve a more complex calculation: the VCF must project the total value of the pension that will be received and the total value of the pension that would have been received but for the eligible condition, in order to compensate the difference. These calculations involve information specific to the pension plan (such as the formulas the plan administrator uses to calculate pensions) as well as information specific to the victim (such as the victim's years of service and salary history). The VCF has the plan-specific information necessary to calculate pension loss for some pension programs, such as the New York City Fire Pension Fund. To support a claim for pension loss for other pension programs, claimants may be required to submit additional documents about the pension plan, and additional work may be involved by the VCF to calculate the loss.

If a claimant does not request loss of benefits or does not submit complete information about benefits, and there are no disability pension benefits that must be offset, the VCF will apply standard default benefit values in calculating the lost earnings award: a 401k employer contribution equal to 4% of base salary and \$2,400 per year for health insurance. The VCF will also use the standard default values for victims who did not have benefits or who had benefits that were less than the standard default values. Sections 2.2(d) through (h) (pp. 39-40) of the VCF's Policies and Procedures describe the VCF's policies regarding pension loss.

TOPIC 2 Questions:

- A. What limitations on, or adjustments to, lost earnings awards should the VCF consider implementing? For example, should the VCF cap the overall total dollar value of the lost earnings award? Should the VCF make adjustments to the components used in calculating the lost earnings award, such as limiting the number of years of work life that can be compensated, and/or adjusting the growth rates?
- B. In what ways, if any, should the VCF adjust lost earnings to account for other income or payments the victim has received or is entitled to receive? For example, should the VCF deduct the amount of retirement, pension, or other benefits a victim has received, or is entitled to receive, due to ordinary retirement or due to disabilities that are based on ineligible conditions?
- C. What considerations, if any, should be made to account for victims who were determined to be disabled due to an eligible condition only after they had already left the workforce? Should a time limit apply between when a victim leaves the workforce and when s/he is determined to be disabled due to an eligible condition, in order for the VCF to consider awarding lost earnings? Should the reason why the victim stopped working matter?

- D. What assumptions should the VCF make in considering and calculating future lost earnings to account for the impact that a victim's pension may have on continued employment? For example, in situations where the victim is receiving a full retirement pension, is it reasonable to assume that the victim would not have continued to work at the same earnings level, or that the victim would not have continued working at all?
- E. When awarding lost earnings, should the VCF apply default employer retirement benefits values in all cases regardless of whether the victim participated in a defined benefit pension plan? Should the VCF adopt a set of universal default values that would apply to all victims that have defined benefit pension plans, rather than using values derived from victim and employer-specific or union-specific retirement plans?
- F. What additional suggestions do you have for changes to the lost earnings award calculation process that address the goals of preserving funds and ensuring that funding is prioritized for those with the most debilitating eligible conditions?

TOPIC 3: Disability Determinations

To qualify for a future lost earnings/benefits award, a claimant filing a personal injury claim must first establish a permanent partial or total occupational disability based on an eligible 9/11-related physical injury. Under the regulations governing the VCF, to evaluate claims of lost earnings, the Special Master will generally make a determination regarding whether a victim is capable of performing his/her usual profession. 28 C.F.R. §§ 104.45(1), 104.45(3). In general, the VCF will accept a determination by a governmental agency, such as the Social Security Administration, a state workers' compensation board, the Fire Department of New York/New York City Fire Pension Fund (FDNY), the New York City Police Department/New York City Police Pension Fund (NYPD), the New York City Employees' Retirement System (NYCERS),

the Veterans Administration, or a private insurer, that a victim has a disability and will accept the governmental agency's (or private insurer's) determination of the cause of the disability.

Sections 2.2(b) and (c), pp. 37-39, of the VCF's Policies and Procedures explain the VCF's policies regarding disability determinations.

TOPIC 3 Questions:

- A. When a victim has one or more disability determinations, some based on VCF-eligible conditions and some based on VCF-ineligible conditions, what factors should the VCF consider in determining the appropriate percentage of disability attributable to the eligible conditions? Should the VCF consider requiring a minimum percentage of disability attributable to eligible conditions in order to award lost earnings?
- B. With respect to claims of total permanent disability, should the Special Master accept a determination of disability as permanent without any further medical evidence or review? How should the Special Master treat available medical evidence suggesting that conditions lessened or resolved themselves since the time of the disability determination? Should the Special Master make allowance for conditions that are curable or that are likely to resolve before a victim reaches the end of worklife when deciding the end date for a lost earnings award?
- C. For victims who are considered to be partially disabled due to an eligible condition, the VCF assumes that the victim continues to have a residual earnings capacity – that is, the ability to work and earn income despite the disability. How should the VCF calculate the value of this residual capacity?
- D. What additional suggestions do you have for changes to the process by which the Special Master considers a victim's disability determination(s) in calculating awards that address

the goals of preserving funds and ensuring that funding is prioritized for those with the most debilitating eligible conditions?

TOPIC 4: Lost Earnings for Deceased Victims

The VCF may award compensation for lost earnings/benefits for a deceased victim if the claimant filing on behalf of the victim explicitly makes a claim for earnings losses incurred as a result of an eligible condition before the victim died (“pre-death lost earnings”) and/or for earnings loss resulting from the death of the victim (“future lost earnings”). In order to qualify for consideration of a pre-death lost earnings award, the claimant must provide sufficient evidence that the victim was unable to work as a result of an eligible condition before death. In order to qualify for consideration of a future lost earnings/benefits award (i.e., after the victim’s death), the claimant must provide sufficient evidence that the cause of death was related to an eligible condition. In either case, the claimant must also submit sufficient information about the victim’s earnings and benefits, as well as about benefits paid to the victim’s survivors on account of the victim’s death. Section 2.2 (pp. 36-46) and Section 6 (pp. 74-81) of the VCF’s Policies and Procedures describes the VCF’s policies regarding lost earnings in claims for deceased victims.

TOPIC 4 Questions:

- A. What adjustments should be made to the way the VCF calculates pre-death lost earnings for deceased victims? For example, should the VCF award pre-death lost earnings only where the victim was deemed fully disabled due to an eligible condition? Should the VCF require a minimum period of time to elapse between the victim’s onset of disability and his/her date of death in order for the VCF to award pre-death lost earnings?

- B. When calculating future lost earnings awards for deceased victims, how should the VCF account for the fact that a victim was not working prior to death? For example, if the victim had left the workforce due to an ineligible disability, what adjustments should/could be made to account for the impact of the ineligible conditions on his/her ability to perform his/her usual occupation?
- C. At what age should the VCF assume an individual would stop working (i.e., presumed worklife expectancy) when calculating future lost earnings for deceased victims? What factors might rebut the presumption of worklife expectancy?
- D. What additional suggestions do you have for possible changes to lost earnings awards for deceased victims in the interest of preserving funds and ensuring that funding is prioritized for those with the most debilitating eligible conditions?

TOPIC 5: Replacement Services Loss

The Zadroga Act, as amended, allows for replacement services loss to be awarded when a victim performed general household-related tasks, and the victim can no longer perform those tasks as a result of an eligible condition. The types of tasks that are considered for replacement services compensation are services that the victim performed for their family or for themselves, such as cleaning, cooking, child care, home maintenance and repairs, and financial services. Replacement Services loss is typically considered to be a component of loss in wrongful death claims, or in claims where the victim did not have prior earned income or worked only part-time outside the home. Replacement Services loss awards are not precluded in other circumstances, but they are variable according to the individualized needs and circumstances of the victim and subject to the discretion of the Special Master. Section 2.4(b) (pp. 60-61) of the VCF's Policies and Procedures describes the replacement services policies in detail.

TOPIC 5 Questions:

- A. Should claims for replacement services loss only be considered on amendment after an initial award decision is made, similar to the VCF's policy regarding medical expenses loss?
- B. Should replacement services compensation be limited solely to claims made on behalf of decedents? Or limited solely to victims with minor and/or special needs children?
- C. Should replacement services compensation in wrongful death claims be limited, as it is in personal injury claims, to cases where the victim did not have prior earned income or worked only part-time outside the home prior to death?
- D. What additional suggestions do you have for possible changes to the replacement services awards that address the goals of preserving funds and ensuring that funding is prioritized for those with the most debilitating eligible conditions?

TOPIC 6: Medical Expenses Loss

The VCF may reimburse claimants for past medical expenses related to an eligible condition and paid out-of-pocket. Under current VCF policy, medical expenses can only be claimed after a claimant has received an initial award determination. The VCF will only review the medical expense amendment if the total amount of the claimed medical expenses exceeds \$2,000. For each medical expense, the claimant must provide the date of service, name of doctor or facility, a short description of the procedure or expense, proof that the expense is related to an eligible condition, and proof of payment. Reimbursable medical expenses may include, but are not limited to, medical equipment, co-pays, prescription costs, diagnostic tests, or costs associated with home health, hospice, or physical therapy. Section 2.4(a) (pp. 53-60) of the VCF's Policies and Procedures details the medical expenses policies.

TOPIC 6 Questions:

- A. Should the \$2,000 minimum threshold for consideration of medical expenses be increased?
- B. Should the VCF reconsider the categories of medical expenses that are eligible for reimbursement? For example, how should the VCF consider co-pays or expenses paid pursuant to an insurance policy deductible?
- C. Should the VCF add or remove expenses to the list of presumptively covered medical expenses, see Policies and Procedures, pp. 59-60?
- D. What additional suggestions do you have for changes to the medical expense reimbursement policy that address the goals of preserving funds and ensuring that funding is prioritized for those with the most debilitating eligible conditions?

TOPIC 7: Collateral Source Offsets

The Zadroga Act, as amended, requires the VCF to offset from all awards the amount of compensation a claimant has received, or is entitled to receive, from certain collateral sources as a result of an eligible condition. During the claim review process, the VCF obtains information regarding certain collateral offset payments directly from the source of the payment, while other collateral source information is provided by the claimant. Because of the statutory offset requirement, claimants are required to notify the VCF in writing of any collateral source benefits resulting from an eligible condition. As a matter of policy, the VCF has adopted a “grace period” such that, if a claimant notifies the VCF within 90 days of the time that s/he learns that s/he is entitled to receive such a benefit, an award that has been determined and paid will not be adjusted to reflect the new or revised entitlement or payment. Section 2.5 of the VCF’s Policies

and Procedures (pp. 61-66) describes how collateral offsets are defined, calculated, and applied to awards.

TOPIC 7 Questions:

- A. Should the VCF revise the rule that, if a claimant notifies the VCF within 90 days of a change in an applicable offset, the VCF will not adjust the award?
- B. How should the VCF treat contingent collateral offsets, for example, survivor benefits paid to a spouse that are contingent such that they will terminate if the spouse remarries?
- C. Should the VCF require claimants to notify the VCF of other factors (i.e., in addition to new collateral source payments) that may require an adjustment to the award? For example, should the VCF require notification if a claimant who has been awarded future lost earnings returns to work or becomes disabled by an ineligible condition?
- D. What additional suggestions do you have for possible changes to the collateral source offset policy that address the goals of preserving funds and ensuring that funding is prioritized for those with the most debilitating eligible conditions?

TOPIC 8: Amendments Policy

Under current VCF policy, a claimant may file an amendment if:

- The WTC Health Program certifies the victim for a condition not previously certified, or the victim is diagnosed with a new 9/11 related injury or condition that qualifies for verification through the VCF Private Physician process.
- The victim's injury or condition substantially worsens, resulting in loss that was not previously compensated.
- The victim has incurred additional economic losses due to an eligible injury or condition.

- The claimant has information in support of the claim that was not submitted to the VCF when the award was determined and that the claimant believes would affect the amount of the calculated loss.
- The claimant needs to add, change, or remove the Personal Representative or parent/guardian on an existing claim.
- The claim was denied or deemed inactive because the claimant did not respond to the VCF's request for missing information and the claimant is now ready to provide the requested documents.
- The claimant has received the initial award determination on the claim and is seeking reimbursement for out-of-pocket medical expenses that total more than \$2,000.
- The claimant previously submitted a claim for one or more components of economic loss and now wants to withdraw that portion of the claim.

The VCF allows a claimant to file an amendment at any time before or after receiving an initial award determination, including after any payment has been made on the claim, so long as the amendment is filed before December 18, 2020. Section 5 (pp. 73-74) of the VCF's Policies and Procedures explains the amendments policy in detail.

TOPIC 8 Questions:

- A. What factors should the VCF consider to limit the filing of amendments? For example, should the VCF impose a temporal limitation, such that the VCF will only consider information and/or claimed losses that were not known to the claimant, or did not exist, at the time the original claim was filed?

- B. What additional suggestions do you have for possible changes to the amendments policy and process that address the goals of preserving funds and ensuring that funding is prioritized for those with the most debilitating eligible conditions?

TOPIC 9: Other Issues/Considerations

- A. What additional suggestions do you have for changes to the VCF's policies and procedures that address the goals of preserving funds and ensuring that funding is prioritized for those with the most debilitating eligible conditions?

Dated: September 28, 2018.

Rupa Bhattacharyya,

Special Master,

September 11th Victim Compensation Fund.

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